Rule 804. Exceptions to the Rule Against Hearsay—When the Declarant Is Unavailable as a Witness.

(a) Criteria for Being Unavailable. A declarant is considered to be unavailable as a witness if the declarant:

(1) is exempted from testifying about the subject matter of the declarant's statement because the court rules that a privilege applies;

(2) refuses to testify about the subject matter despite a court order to do so;

(3) testifies to not remembering the subject matter;

(4) cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or

(5) is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure:

(A) the declarant's attendance, in the case of a hearsay exception under Rule 804(b)(1) or (5); or

(B) the declarant's attendance or testimony, in the case of a hearsay exception under Rule 804(b)(2), (3), or (4).

But this subsection (a) does not apply if the statement's proponent procured or wrongfully caused the declarant's unavailability as a witness in order to prevent the declarant from attending or testifying.

(b) The Exceptions. The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:

(1) *Former Testimony in a Criminal Case.* Testimony that:

(A) was made under oath by a party or witness during a previous judicial proceeding or a deposition under Arizona Rule of Criminal Procedure 15.3 shall be admissible in evidence if:

(I) The party against whom the former testimony is offered was a party to the action or proceeding during which a statement was given and had the right and opportunity to cross-examine the declarant with an interest and motive similar to that which the party now has (no person who was unrepresented by counsel at the proceeding during which a statement was made shall be deemed to have had the right and opportunity to cross-examine the declarant, unless such representation was waived) and

(ii) The declarant is unavailable as a witness, or is present and subject to cross-examination.

(B) The admissibility of former testimony under this subsection is subject to the same limitations and objections as though the declarant were testifying at the hearing, except that the former testimony offered under this subsection is not subject to:

(I) Objections to the form of the question which were not made at the time the prior testimony was given.

(ii) Objections based on competency or privilege which did not exist at the time the former testimony was given.

(2) *Statement Under the Belief of Imminent Death.* In a prosecution for homicide or in a civil case, a statement that the declarant, while believing the declarant's death to be imminent, made about its cause or circumstances.

(3) *Statement Against Interest.* A statement that:

(A) a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and

(B) is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.

(4) *Statement of Personal or Family History.* A statement about:

(A) the declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood, adoption, or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or

(B) another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person's family that the declarant's information is likely to be accurate.

(5) [Formerly (7) *Other exceptions.*] [Transferred to Rule 807.]

(6) *Statement Offered Against a Party That Wrongfully Caused the Declarant's Unavailability.* A statement offered against a party that wrongfully caused—or acquiesced in wrongfully causing—the declarant's unavailability as a witness, and did so intending that result.

Comment to 2012 Amendment

Rule 804(b)(1) has been amended to incorporate the language of Arizona Rule of Criminal Procedure 19.3(c).

Rule 804(b)(3) has been amended to conform to Federal Rule of Evidence 804(b)(3), as amended effective December 1, 2010.

To conform to Federal Rules of Evidence 804(b)(5) and 807, Rule 804(b)(7) has been deleted and transferred to Rule 807.

Additionally, the language of Rule 804 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent in the restyling to change any result in any ruling on evidence admissibility.

Comment to 1994 Amendment

For provisions governing former testimony in non-criminal actions or proceedings, *see* Rule 803(25).

NOTE: On March 8, 2004, the United States Supreme Court decided *Crawford v. Washington*, 541 U.S. 36 (2004), which greatly changed the law in determining whether admission of hearsay statements violated the confrontation clause. Cases decided prior to that date holding admission of certain statements did not violate the confrontation clause therefore may no longer be good law.

Cases

804.010 Considerations of public policy and the necessities of the case permit dispensing with confrontation at trial if two conditions exist: (1) the declarant's in-court testimony is unavailable; and (2) the declarant's out-of-court statement bears adequate indicia of reliability. (Note: contrary to *Crawford.*)

State v. Huerstel, 206 Ariz. 93, 75 P.3d 698, ¶¶ 27–34 (2003) (defendant introduced statements from two inmates who claimed codefendant told them he shot all three victims; trial court then allowed state to introduce codefendant's statement to police in which he claimed defendant shot all three victims; court held accomplice confession that implicates defendant is not within firmly rooted hearsay exception to hearsay rule, and trial court made no finding that codefendant's statement to police bore sufficient indicia of reliability, thus trial court erred in admitting codefendant's statement).

804.025 If a statement falls within a firmly rooted hearsay exception, the statement is considered sufficiently reliable to satisfy the reliability requirement of the confrontation clause. (Note: contrary to *Crawford.*)

State v. Huerstel, 206 Ariz. 93, 75 P.3d 698, ¶¶ 27–34 (2003) (defendant introduced statements from two inmates who claimed codefendant told them he shot all three victims; trial court then allowed state to introduce codefendant's statement to police in which he claimed defendant shot all three victims; court held accomplice confession that implicates defendant is not within firmly rooted hearsay exception to hearsay rule, and trial court made no finding that codefendant's statement to police bore sufficient indicia of reliability, thus trial court erred in admitting codefendant's statement).

State v. Prasertphong, 206 Ariz. 70, 75 P.3d 675, ¶¶ 34–39 (2003) (defendant sought to admit portions of codefendant's statement that were self-incriminating; state contended entire statement must be admitted, which included portions wherein codefendant shifted some responsibility to defendant; court agreed with trial court that admitting only portions of statement offered by defendant would have been misleading, thus entire statement would have to be admitted, but portion state wanted admitted would not be admissible if it violated confrontation clause; court held, however, that portion state wanted admitted sufficiently inculpated codefendant to make it admissible under Rule 804(b)(3), and fact that it was somewhat inculpatory of defendant did not make it any less inculpatory, reliable, or admissible).

State v. Bronson, 204 Ariz. 321, 63 P.3d 1058, ¶¶ 15–28 (Ct. App. 2003) (court held accomplice confessions that implicate criminal defendants and are sought to be admitted under Rule 804(b)(3) are not within firmly-rooted exception; court further found insufficient indicia of reliability, thus court held admission of transcript of accomplice's interview conducted by defendant's attorney was error).

Paragraph (a)(1) — Definition of unavailability—Exempt from testifying because of privilege.

804.a.1.010 If the witness has a good faith basis for invoking the Fifth Amendment privilege, the witness will be considered unavailable.

804.a.1.020 Unless the record clearly shows the declarant will invoke the Fifth Amendment privilege, the declarant will not be considered unavailable.

State v. Harrod, 200 Ariz. 309, 26 P.3d 492, ¶¶ 14–17 (2001) (defendant contended that, because declarant was under sentence of death in California, declarant would not come to Arizona and admit to committing another murder; court held that, because there was no affirmative showing declarant would have refused to testify if called as witness, defendant failed to show declarant was "unavailable" within meaning of rule 804(b)(3)).

Paragraph (a)(2) — Definition of unavailability—Refusal to testify.

804.a.2.010 A witness will be considered unavailable if the witness persists in refusing to testify about the subject matter of the witness's statement despite an order of the court to do so.

State v. Lehr, 227 Ariz. 140, 254 P.3d 379, ¶¶ 27–35 (2011) (at pretrial hearing before retrial, victim testified she would not testify against defendant because she opposed capital punishment; trial court threatened her with contempt, including jail for up to 6 months; she said putting her in jail or fining her would not change her mind; court held trial court did not abuse discretion in finding victim was unavailable and allowing admission of her testimony from first trial).

Paragraph (a)(3) — Definition of unavailability—Unable to testify because of lack of memory.

804.a.4.010 If the witness has a good faith loss of memory, the witness will be considered unavailable.

804.a.4.020 Whether a witness is considered "unavailable" for Sixth Amendment purposes is determined as a matter of constitutional law, and not as a matter or state evidentiary law.

State v. Real, 214 Ariz. 232, 150 P.3d 805, ¶ 11 (Ct. App. 2007) (officer administered FSTs to defendant and then took his statement; at trial, officer had no independent memory of investigation, so trial court allowed officer to read from his report; defendant contended officer was "unavailable" under Rule 804(a)(3); court held that, because officer was present and was subject to cross-examination, officer was available).

Paragraph (a)(4) — Definition of unavailability—Unable to testify because of injury or death.

804.a.4.010 A declarant who is seriously injured or incapacitated, or is dead, is unavailable.

Aranada v. Cardenas, 215 Ariz. 210, 159 P.3d 76, ¶¶ 35–37 (Ct. App. 2007) (in wrongful death action where mother and child died, because mother was dead, she was unavailable, so mother's statement in her medical history and mother's statement to relative that plaintiff was father of child would be admissible).

State v. Dunlap, 187 Ariz. 441, 930 P.2d 518 (Ct. App. 1996) (declarant was dead).

Paragraph (a)(5) — Definition of unavailability—Unable to testify because of absence.

804.a.5.001 A declarant who cannot be found after a good faith effort is unavailable.

State v. Montaño, 204 Ariz. 413, 65 P.3d 61, ¶¶ 25–31 (2003) (two witnesses, who were illegal aliens, testified at preliminary hearing but were then out of country during trial; because state was able to subpoena one witness before he left country, state made good-faith effort for that witness; although state did not subpoena other witness, court concluded state had made sufficient efforts, thus trial court did not abuse discretion in concluding that witness were "unavailable" and that preliminary hearing videotape was admissible).

State v. Tankersley, 191 Ariz. 359, 956 P.2d 486, ¶¶ 44, 46 (1998) (because neither state nor defendant could find declarant, declarant was unavailable).

804.a.5.020 "Good faith effort" to locate a witness is not subject to a precise definition and is instead left to the sound discretion of the trial court.

State v. Montaño, 204 Ariz. 413, 65 P.3d 61, ¶¶ 25–31 (2003) (two witnesses, who were illegal aliens, testified at preliminary hearing but were then out of country during trial; because state was able to subpoena one witness before he left country, state made good-faith effort for that witness; although state did not subpoena other witness, court concluded state had made sufficient efforts, thus trial court did not abuse discretion in concluding that witness were "unavailable" and that preliminary hearing videotape was admissible).

State v. Rivera, 226 Ariz. 325, 247 P.3d 560, ¶¶ 12–16 (Ct. App. 2011) (evidence showed state attempted to contact witness through attorney who had been contact during first trial, mailed subpoena to last known address, checked utilities, driver's licenses, and criminal history, contacted law enforcement personnel and other civilian witnesses, and called three telephone numbers it had for witness; court held these efforts were reasonable; because state did not know if witness was in Mexico, state was not required to invoke international treaties in attempt to locate witness).

804.a.5.030 In a criminal prosecution, the state must make a good faith effort to obtain the witness's presence at trial, which ordinarily would require the issuance of a subpoena, including the utilization of the Uniform Act To Secure the Attendance of a Witness From Without a State; if the witness's whereabouts are unknown and if the state makes a diligent effort to locate the witness, issuance of a subpoena would be futile and therefore is not necessary.

State v. Montaño, 204 Ariz. 413, 65 P.3d 61, ¶¶ 25–31 (2003) (two witnesses, who were illegal aliens, testified at preliminary hearing but were then out of country during trial; because state was able to subpoena one witness before he left country, state made good-faith effort for that witness; although state did not subpoena other witness, court concluded state had made sufficient efforts, thus trial court did not abuse discretion in concluding that witness were "unavailable" and that preliminary hearing videotape was admissible).

Paragraph (b)(1) — Former testimony.

804.b.1.010 The use of former testimony is an exception to the rule against hearsay whenever a witness is declared incompetent to testify or is otherwise unavailable.

State v. Montaño, 204 Ariz. 413, 65 P.3d 61, ¶¶ 25–31 (2003) (two witnesses, who were illegal aliens, testified at preliminary hearing but were then out of country during trial; because state was able to subpoena one witness before he left country, state made good-faith effort for that witness; although state did not subpoena other witness, court concluded state had made sufficient efforts, thus trial court did not abuse discretion in concluding that witness were "unavailable" and that preliminary hearing videotape was admissible).

804.b.1.020 An exception to the confrontation clause exists when the witness is unavailable but has previously testified at a judicial proceeding, subject to cross-examination, against the same defendant.

State v. Prince, 226 Ariz. 516, 250 P.3d 1145, ¶¶ 41–43 (2011) (issue of defendant's guilt was determined by one jury, and issue of sentence was determined by another jury; at aggravation phase, state had read to jurors transcript of testimony state's gun expert gave at guilt phase; court noted such testimony would be admissible if (1) declarant were unavailable, and (2) defendant had right and opportunity to cross-examine witness; because defendant did not object at trial, court reviewed for fundamental error only, and held defendant failed to prove prejudice because testimony had no bearing on aggravating circumstance state presented).

State v. Montaño, 204 Ariz. 413, 65 P.3d 61, ¶¶ 21–32 (2003) (two witnesses, who were illegal aliens, testified at preliminary hearing, but were then out of country during trial; because defendant had adequate opportunity to cross-examine witnesses at preliminary hearing and availed himself of that opportunity, preliminary hearing videotape bore sufficient indicia of reliability to be admissible).

804.b.1.030 The party against whom the statement is offered must have had the opportunity and a similar motive to cross-examine.

State v. Montaño, 204 Ariz. 413, 65 P.3d 61, ¶ 32 (2003) (two illegal aliens, testified at preliminary hearing, but were then out of country during trial; defendant contended that his attorney did not have sufficient time to prepare for preliminary hearing and thus did not have complete and adequate opportunity to cross-examine witnesses at preliminary hearing; court noted defendant's attorney was appointed 6 days after complaint was filed and that preliminary was held 6 weeks after defendant's attorney was appointed, and thus concluded that attorney had adequate opportunity to cross-examine witnesses at preliminary hearing).

804.b.1.040 Former testimony in a criminal action is admissible as provided by Rule 19.3(c), ARIZ. R. CRIM. P.

State v. Montaño, 204 Ariz. 413, 65 P.3d 61, ¶¶ 21–32 (2003) (two witnesses, who were illegal aliens, testified at preliminary hearing, but were then out of country during trial; because defendant had adequate opportunity to cross-examine witnesses at preliminary hearing and availed himself of that opportunity, preliminary hearing videotape bore sufficient indicia of reliability, and thus was admissible under Rule 19.3(c)).

Paragraph (b)(3) — Statements against interest.

804.b.3.005 For a statement to be admissible under this exception: (1) the declarant must be unavailable; (2) the statement must be against the declarant's interest; and (3) there must be corroborating evidence that indicates the statement's trustworthiness.

State v. Machado, 226 Ariz. 281, 246 P.3d 632, ¶¶ 19–22 (2011) ((1) because telephone call was from anonymous caller, caller was unavailable; (2) although call from anonymous caller usually would not be against caller's penal interest (because caller was seeking to protect against consequences of call), in this case, police used call to get warrant for suspect's voice sample, thus call was against penal interest; (3) other evidence corroborated statements in call about vehicles and when they arrived at house; evidence of telephone call was thus admissible).

State v. Pandeli, 200 Ariz. 365, 26 P.3d 1136, ¶ 21 (2001) (court made general statement about admissibility).

State v. Harrod, 200 Ariz. 309, 26 P.3d 492, ¶¶ 14–17 (2001) (defendant contended that, because declarant was under sentence of death in California, declarant would not come to Arizona and admit to committing another murder; court held that, because there was no affirmative showing declarant would have refused to testify if called as witness, defendant failed to show declarant was "unavailable" within meaning of rule 804(b)(3)).

* *Cal X-tra v. W.V.S.V. Holdings,* 229 Ariz. 377, 276 P.3d 11, ¶¶ 55–57 (Ct. App. 2012) (in support of plaintiffs' motion for summary judgment, plaintiffs included deposition from one plaintiff [Beus] stating what Sara Taylor Hickey [Taylor] told him about source of computer disk that had on it damaging information; because Taylor was now dead and her statements about computer disk were against pecuniary interest, her statements were admissible even if hearsay).

804.b.3.007 Because the defendant has the choice whether or not to testify, the defendant is not "unavailable" to himself or herself, thus when the defendant seeks to introduce his or her own statement, that statement does not qualify under this exception.

State v. Pandeli, 200 Ariz. 365, 26 P.3d 1136, ¶¶ 21–23 (2001) (defendant sought to introduce his own statement under this exception; court held trial court properly held statement was not admissible under this exception).

804.b.3.020 Exclusion of a statement offered under this exception by the defendant does not violate the defendant's constitutional right to present evidence.

804.b.3.030 A statement is admissible if, at the time that the declarant made it, it was so contrary to the declarant's pecuniary or proprietary interest, or subjected the declarant to civil or criminal liability, that the declarant would not have made it if it were not true.

State v. Tankersley, 191 Ariz. 359, 956 P.2d 486, ¶ 46 (1998) (because letter suggested that declarant had killed the victim, it was against his penal interest).

804.b.3.050 This exception is not limited to a direct confession, but the statement must at least implicate the declarant in a crime.

State v. Tankersley, 191 Ariz. 359, 956 P.2d 486, ¶ 46 (1998) (even though letter was not a confession that declarant had killed victim, because it suggested that he had killed the victim, letter was against his penal interest).

804.b.3.060 A statement offered to **exculpate** the defendant is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement; at least seven factors suggest the trustworthiness of a statement: (1) the existence of corroborating and contradicting evidence; (2) the relationship between the declarant and the listener; (3) the relationship between the declarant and the defendant; (4) the number of times the declarant made the statement and the consistency of the multiple statements; (5) the amount of time between the event and the making of the statement; (6) whether the declarant will benefit from the statement; and (7) the psychological and physical environment surrounding the making of the statement; in determining whether to admit the statement, the trial court should determine only whether evidence presented corroborating and contradicting the statement would permit a reasonable person to believe it could be true, and if so should admit the statement; only after the statement is admitted in evidence should factors other than the corroborating and contradicting evidence be considered, and then only by the jurors; appellate decisions have, however, determined admissibility of the statement based on the additional consideration of one or more of the other six factors.

State v. Ellison, 213 Ariz. 116, 140 P.3d 899, ¶¶ 48–51 (2006) (defendant sought to introduce statements codefendant made to fellow jail inmate; in concluding that trial court correctly excluded statements, court did not discuss any corroborating or contradicting evidence, but instead noted that trial court found that codefendant made statements while in administrative segregation in jail and housed with "the baddest of the bad," and that codefendant feared retaliation and may have simply bragged about murders to protect himself).

State v. Harrod, 200 Ariz. 309, 26 P.3d 492, ¶¶ 18–19 (2001) (defendant charged with murder, and offered in evidence purported confession of Majors, who was under sentence of death in California; as contradiction, court noted there was no evidence Majors was at scene of crime, details in Majors' statement were inconsistent with crime, and Majors denied any involvement in crime; court concluded trial court did not err in precluding admission of statement).

State v. Tankersley, 191 Ariz. 359, 956 P.2d 486, ¶¶ 44–47 (1998) (defendant was charged with murder, and offered in evidence letter from Thompson to Bauer stating "this is the year for me to settle up with all who have fucked over me," and containing newspaper clipping about victim's murder and lawsuit Thompson had filed against victim; as contradiction, court noted there was no evidence that linked Thompson to victim's murder, and there was evidence that eye-witness saw defendant enter victim's room, DNA and bite-mark evidence connected defendant to victim, and no evidence placed Thompson near area where victim was killed; court also considered factor (2) and (6) Thompson could have made statement to collect debt from Bauer, and factor (4) Thompson made statement only once; court concluded trial court did not err in precluding admission of statement).

State v. Henry, 176 Ariz. 569, 575–76, 863 P.2d 861, 867–68 (1993) (defendant was charged with murder, and offered in evidence Foote's statement indicating only he, and not defendant, dragged victim to where body was found; as contradiction, court noted there were sets of footprints on either side of drag marks made by victim, there was blood on defendant's clothing and not on Foote's clothing, and Foote was extremely intoxicated, which made it unlikely he could have stabbed victim without getting blood on his own clothing; court also considered factor (2) Foote made statement to police, factor (3) defendant threatened Foote and his family, factor (4) statement was not spontaneous and Foote never repeated it, factor (5) Foote made statement 6 months after event, and factor (7) Foote was intoxicated at time of event, which would have cast doubt on his ability to recollect; court stated, "[w]hile the issues of trustworthiness raises questions of veracity, reliability and credibility, which are traditionally reserved to the trier of fact, we conclude here that no reasonable person could have believed Foote's statements under the circumstances," thus trial court did not err in precluding statement).

State v. Lopez, 159 Ariz. 52, 54–55, 764 P.2d 1111, 1113–14 (1988) (defendant was charged with leaving scene of accident, and offered in evidence Guerrero's statement that he, and not defendant, was driving car at time of accident, but trial court did not admit statement; court noted there was other evidence contradicting Guerrero's statement, including defendant's own admission of guilt, but as corroboration, court noted Guerrero often drove Lopez's car and drove it night of accident, Guerrero was with Lopez night of accident, seat was forward, which was position Guerrero, and not Lopez, would use, and Guerrero offered to assume partial responsibility for repairing car; as additional evidence of corroboration, court considered factor (2) Guerrero made statement to mutual friends, defendant's parents, and prosecuting attorney, and factor (4) Guerrero made statement no less than eight times; court concluded trial court erred in precluding admission of statement).

State v. LaGrand (Walter), 153 Ariz. 21, 25–29, 734 P.2d 563, 567–71 (1987) (brothers Walter and Karl were charged with murder; Walter offered in evidence Karl's statement that he stabbed victims at time when Walter was out of room; court identified seven factors that could be considered, and stated that only corroborating and contradicting evidence went to admissibility of statement, and that other six factors related to veracity, reliability, and credibility, which were the province of the jurors, thus trial court should consider only corroborating and contradicting evidence and not other six factors; as corroboration, court noted one victim said other victim kicked someone, and Karl had bruise on leg as he stated, victim said only one person stabbed her, and defendant said he was out of room when stabbings occurred; as contradiction, court noted one victim said she saw other victim struggling with two men, she was "positive" Walter stabbed her, and that, after stabbing, one man said to other twice, "Just make sure he's dead," and medical examiner said more than one instrument was used to stab victim; court stated that, after reviewing corroborating and contradicting evidence, it did not think any reasonable person could have concluded statement could have been true, thus trial court did not err in precluding admission of statement).

State v. Macumber, 119 Ariz. 516, 520–21, 582 P.2d 162, 166–67 (1978) (defendant was charged with murder, and offered in evidence Valenzuela's statement made to two attorneys and psychiatrist wherein he said he killed victims; court noted statements were vague and lacked details, and those details given did not correspond with physical evidence; statements therefore were inadmissible).

State v. Doody, 187 Ariz. 363, 377, 930 P.2d 440, 454 (Ct. App. 1996) (defendant was charged with murder, and offered in evidence statement Caratachea made to Herron wherein Caratachea supposedly said someone other than Doody killed victims; court considered only corroborating and contradicting evidence, and as corroboration, noted Herron had piece of paper with Caratachea's signature on it, but said signature corroborated only that conversation took place and not substance of conversation; court concluded trial court did not err in precluding admission of statement).

State v. Grijalva, 137 Ariz. 10, 14–15, 667 P.2d 1336, 1340–41 (Ct. App. 1983) (defendant offered statement Corrales made wherein Corrales allegedly said that he, and not defendant, committed offense; court considered only corroborating and contradicting evidence; court noted there was no corroboration that Corrales either made statement or committed offense; court concluded trial court did not err in precluding admission of statement).

804.b.3.070 A statement offered to **inculpate** the defendant is not admissible unless corroborating circumstances and the circumstances of the making of the statement clearly indicate the trustworthiness of the statement; in assessing the circumstances of the making of the statement, the court should consider both the motives of the out-of-court declarant and the veracity of the in-court witness.

State v. Latimer, 171 Ariz. 439, 831 P.2d 438 (Ct. App. 1992) (because co-defendant had reason to deny or minimize his involvement and to fabricate or at least exaggerate defendant's culpability, co-defendant's testimony in his own trial was not reliable and should not have been admitted against defendant at defendant's trial).

State v. Daniel, 169 Ariz. 73, 817 P.2d 18 (Ct. App. 1991) (trial court erred in considering extrinsic evidence; because there was some evidence that declarant had ingested drugs, that he may have been trying to improve his own situation with police, and that he may have had some motives for revenge against defendant, statement was not admissible).

State v. Canaday, 141 Ariz. 31, 684 P.2d 912 (Ct. App. 1984) (court concluded that, considering all circumstances surrounding taking of declarant's statement, which was during custodial interrogation, there were not sufficient indicia of trustworthiness present, thus it was error to admit statement).

804.b.3.075 An out-of-court statement satisfies the requirements of the confrontation clause if it comes under a firmly rooted exception to the hearsay rule; the statement of an accomplice that shifts or spreads the blame to a criminal defendant is outside the realm of those hearsay exceptions that are so trustworthy that adversarial testing can be expected to add little to the statement's reliability, thus the statement of an accomplice that inculpates a criminal defendant and does not, at the same time, implicate the declarant, is not within a firmly rooted exception to the hearsay rule and thus does not satisfy the requirements of the confrontation clause.

State v. Huerstel, 206 Ariz. 93, 75 P.3d 698, ¶¶ 27–34 (2003) (defendant introduced statements from two inmates who claimed codefendant told them he shot all three victims; trial court then allowed state to introduce codefendant's statement to police in which he claimed defendant shot all three victims; court held accomplice confession that implicates defendant is not within firmly rooted hearsay exception to hearsay rule, and trial court made no finding that codefendant's statement to police bore sufficient indicia of reliability, thus trial court erred in admitting codefendant's statement).

State v. Prasertphong, 206 Ariz. 70, 75 P.3d 675, ¶¶ 34–39 (2003) (defendant sought to admit portions of codefendant's statement that were self-incriminating; state contended entire statement must be admitted, which included portions wherein codefendant shifted some responsibility for crimes to defendant; court agreed with trial court that admitting only portions of statement offered by defendant would have been misleading, thus entire statement would have to be admitted, but portion state wanted admitted would not be admissible if it violated confrontation clause; court held, however, that portion state wanted admitted sufficiently inculpated codefendant to make it admissible under Rule 804(b)(3), and fact that it was somewhat inculpatory of defendant did not make it any less inculpatory, reliable, or admissible).

State v. Bronson, 204 Ariz. 321, 63 P.3d 1058, ¶¶ 21–22 (Ct. App. 2003) (court held admission of transcript of accomplice's interview conducted by defendant's attorney was error).

804.b.3.080 Only a statement that inculpates the declarant is admissible, and those portions of a statement that inculpate the defendant, but do not at the same time inculpate the declarant, are not admissible.

State v. Huerstel, 206 Ariz. 93, 75 P.3d 698, ¶¶ 27–34 (2003) (defendant introduced statements from two inmates who claimed codefendant told them he shot all three victims; trial court then allowed state to introduce codefendant's statement to police in which he claimed defendant shot all three victims; court held accomplice confession that implicates defendant is not within firmly rooted hearsay exception to hearsay rule, and trial court made no finding that codefendant's statement to police bore sufficient indicia of reliability, thus trial court erred in admitting codefendant's statement).

State v. Prasertphong, 206 Ariz. 70, 75 P.3d 675, ¶¶ 34–39 (2003) (defendant sought to admit portions of codefendant's statement that were self-incriminating; state contended entire statement must be admitted, which included portions wherein codefendant shifted some responsibility for crimes to defendant; court agreed with trial court that admitting only portions of statement offered by defendant would have been misleading, thus entire statement would have to be admitted, but portion state wanted admitted would not be admissible if it violated confrontation clause; court held, however, that portion state wanted admitted sufficiently inculpated codefendant to make it admissible under Rule 804(b)(3), and fact that it was somewhat inculpatory of defendant did not make it any less inculpatory, reliable, or admissible).

State v. Bronson, 204 Ariz. 321, 63 P.3d 1058, ¶¶ 15–28 (Ct. App. 2003) (court held accomplice confessions that implicate criminal defendants and are sought to be admitted under Rule 804(b)(3) are not within firmly-rooted exception; court further found insufficient indicia of reliability, thus court held admission of transcript of accomplice's interview conducted by defendant's attorney was error).

Paragraph (b)(4) —Statement of personal or family history.

804.b.4.020 If the declarant is unavailable, the declarant's statement concerning another person's birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history is admissible if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

Aranada v. Cardenas, 215 Ariz. 210, 159 P.3d 76, ¶¶ 35–37 (Ct. App. 2007) (in wrongful death action where mother and child died, mother's statement in her medical history and mother's statement to relative that plaintiff was father of child would be admissible).

Paragraph (b)(5) — [Transferred to Rule 807.]

Paragraph (b)(6) — Statement Offered Against a Party That Wrongfully Caused the Declarant's Unavailability.

No Arizona cases.

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